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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,710	10/24/2001	Gary E. LeGrow	2001US405	2771

25255 7590 01/03/2005

CLARIANT CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 01/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/002,710

Applicant(s)

LEGROW ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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DETAILED ACTION

Examiner acknowledges receipt of amendment, remarks, request for extension of time, declaration under 37 CFR 1.132, all filed 08/20/04. Claims 1-9 and 11-19 are pending.

Claim Rejections - 35 USC § 102

1. The rejection of claims 1-9, 11 and 14-19 under 35 U.S.C. 102(e) as being anticipated by LeGrow et al. (US 6,143,309) is withdrawn because applicants' submission of declaration under 37 CFR 1.132 overcomes the rejection since the declaration removes US 6,143,309 as prior art.

Claim Rejections - 35 USC § 103

2. The rejection of claims 1-9 and 11-19 under 35 U.S.C. 103(a) as being unpatentable over LeGrow et al. (US 5,932,231) in view of LeGrow et al. (US 6,143,309) is withdrawn because applicants declare that LeGrow is not an invention by another. LeGrow et al. (US 5,932,231) is still a valid relevant art as the rejection below shows.

3. Claims 1-9 and 11-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeGrow et al. (US 5,932,231) in view of JP 01268615 A

LeGrow discloses a cosmetic formulation that comprises branched alkylsilsesquioxane of the general formula recited in instant claim 1 (abstract). In the general formula, R is a monovalent hydrocarbon of from 6-14 carbon atom such as hexyl, n-hexyl, I-hexyl, heptyl, n-octyl, i-octyl, nonyl, decyl, dodecyl and tetradecyl; x is from 1 to about 6 and the formulation is substantially free of alkoxysilane, chlorosilane, silanol functionalities and free of organic and inorganic compounds (abstract, column 2, lines 1-7 and 34-54 and claims 1-7 and 22). In example 3, the colorless odorless liquid of the silsesquioxane comprises 60% tris(trimethylsiloxy)n-octylsilane, 25% tetrakis(trimethylsiloxy)-1,3-di-n-octyldisiloxane, 9%

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pentakis(trimethylsiloxy)-1,3,5-tri-n-octyltrisiloxane and 4% of higher oligomers (column 6, lines 8-15).

Instant claim 1 requires the composition to have from 0.1 to 60% of at least one trimethylsilylalkyl-silsesquioxane and the prior art's 25% tetrakis(trimethylsiloxy)-1,3-di-n-octyldisiloxane or 9% pentakis(trimethylsiloxy)-1,3,5-tri-n-octyltrisiloxane meets the limitation in claim 1 since one of the trimethylsilylalkyl-silsesquioxane in the prior art is 25% or 9% or 4%. Leave on composition for personal care is future intended use and future intended use is not critical in a composition claim.

LeGrow teaches the composition of the instant claims except that LeGrow fails to teach an emulsion. However, the JP 012686615 discloses an emulsion composition for skin or hair and the composition comprises 0.1-30 weight% polymethylsilsesquioxane (English abstract). Regarding microemulsion or triple emulsion, there is no disclosure in applicants' specification providing the particle size and a showing that the microemulsion or triple emulsion provides unusual results. The JP 012686615 is relied upon for a teaching that silsesquioxanes can be incorporated in emulsions in hair care or skin care cosmetics.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the alkylsilsesquioxane cosmetic formulation of LeGrow. One having ordinary skill in the art would have been motivated to prepare the formulation of LeGrow as an emulsion according to the teaching of JP 012686615 with the expectation that the trimethylsilyl-alkylsilsesquioxane containing lotion formulation/emulsion would not irritate the skin upon application of the lotion/emulsion, with the expectation that the emulsion would not be greasy when applied to the hair or skin while providing excellent moisture retention property.

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In the absence of a showing, a microemulsion or triple emulsion provides no patentable distinction over the emulsion or cream of the prior art.

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Blessing Fubara
Patent Examiner
Tech. Center 1600

